Filed 6/26/19 J.U. v. Superior Court CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

J.U.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent,

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

No. B296668

(Super. Ct. No. 18CCJP03178ABCD)

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Marguerite D. Downing, Judge. Petition granted.

Law Office of Marlene Furth, Nicole J. Johnson and Lazaro Cuevas, for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Real Party in Interest.

Absent fulfillment of special notice requirements, the Welfare and Institutions Code ordinarily mandates court-ordered reunification services for a parent losing custody of his or her child in dependency proceedings for a minimum of 12 months for children three years of age or older and for a minimum of six months for children under three years old. (Welf. & Inst. Code,[1] § 361.5, subds. (a)(1)(A), (a)(1)(B).) In this extraordinary writ proceeding, we consider whether the juvenile court made the necessary findings at a six-month review hearing to permit early termination of reunification services for J.U. (Mother) regarding four of her children who were over three years old.

I. BACKGROUND

Mother has seven children involved in this dependency matter: L.O. (born July 2005), M.V. (born November 2007), A.U. (born May 2010), J.U. (born August 2012), H.C. (born July 2014), N.C. (born April 2016), and J.C. (born August 2017). Jesus O. is the father of L.O. Alfonso V. is the father of M.V. Jaime F. is the father of A.U. and J.U. Henry C. is the father of H.C., N.C., and J.C. At the time the children were detained and removed from their parents' custody on May 18, 2018, H.C., N.C., and J.C. were age three or younger. This petition concerns the four older children: L.O., M.V., A.U., and J.U., who were between ages five and 12 at the time of detention and removal.[2]

---

[1] Undesignated statutory references that follow are to the Welfare and Institutions Code.

[2] The Department of Children and Family Services (DCFS) filed a motion for judicial notice of detention, jurisdiction, and

DCFS's dependency petition alleged all seven children were at substantial risk of serious physical harm based on domestic violence between Mother and Henry C., Mother's substance abuse, Henry C.'s substance abuse, and Henry C.'s failure to obtain immediate medical treatment for N.C. after she sustained second degree burns. DCFS later filed an amended section 300 petition adding allegations based on Henry C.'s physical abuse of A.U. and J.U.

The juvenile court held a combined jurisdiction and disposition hearing in September 2018. It sustained the dependency petition counts alleging a risk of physical harm to the children arising from the domestic violence between Mother and Henry C., Mother's substance abuse, and Henry C.'s failure to obtain medical treatment for N.C. It dismissed the remaining counts. The court declared the children dependents of the court, removed them from parental custody, denied reunification services to Jesus O. and Alfonso V., and granted reunification services to Mother, Jaime F., and Henry C. The court also stated on the record that the children "are part of a sibling set." Mother's case plan consisted of a drug treatment program, a 52-week domestic violence prevention program, a parenting program, individual counseling, family planning, and monitored visitation with the children.

Roughly six months later, DCFS submitted a status review report. The report stated L.O. and M.V. were placed together with foster parents, while A.U. and J.U. were placed with their paternal grandmother. All four children were happy and

---

disposition orders concerning the younger children. The motion is granted.

comfortable in their placements, and their caregivers were described as attentive and responsive to their needs. As to the three younger children, H.C. and N.C. were placed together with foster parents, while J.C. was placed with another set of foster parents who expressed interest in adoption if reunification were to fail.

DCFS additionally reported Mother had not enrolled in any programs for drug treatment, domestic violence, individual counseling, or family planning. She reported she had enrolled in a parenting program, but never provided DCFS with verification of enrollment. Mother also failed to drug test on five days between November 2018 and January 2019. In the six months since the jurisdiction and disposition hearing, Mother had one visit with L.O. and M.V., two visits with A.U. and J.U., and no visits with the three younger children.

In an interview with a social worker, L.O. said she did not want to live with Mother: "I don't want to go back with that lady. She never did nothing for us. I was always taking care of my baby brothers and sisters." L.O. wanted to live with M.V. and her paternal grandparents. M.V. said he wanted to live with Mother and "be a family again" but he was also willing to live with L.O.'s paternal grandparents who were always nice to him and treated him like their grandson. A.U. said she wanted to live on the streets with Mother and "not go to school like before." J.U. said she loved Mother and wanted to live with her.

All seven children had monthly sibling visits with one another. They were always excited when notified of upcoming sibling visits and they appeared to be happy and comfortable during the visits.

Based on Mother's noncompliance with her case plan, DCFS recommended Mother's reunification services be terminated as to all seven children. It noted there was no reason to believe Mother would be able to complete the court's orders and address the family's needs in a reasonable timeframe.

The juvenile court thereafter held a six-month review hearing in March 2019. Minors' counsel submitted on DCFS's recommendation for termination of Mother's reunification services. Mother argued she was entitled to at least 12 months of reunification services as to her four older children because a statutory exception to the 12-month minimum services period—which a court can invoke when children are part of a "sibling group"—was not applicable.

The juvenile court returned H.C., N.C., and J.C. to their father's custody after finding he complied with his case plan and his custody of the children would not be detrimental. It terminated reunification services for Mother as to all seven children, finding by clear and convincing evidence that she was not in compliance with her case plan and had made no progress whatsoever. The court noted it had no information that Mother had participated in any services and found Mother had not consistently or regularly visited the children. The court set a hearing to select a permanent plan for the four older children pursuant to section 366.26.

II. DISCUSSION

Read in the light most favorable to the juvenile court's orders, the record before us indicates the court concluded all seven children constituted a sibling group. The court further found by clear and convincing evidence that Mother had failed to

comply with her case plan or make any progress toward reunification, and the court terminated reunification services for the four older children after only six months rather than the ordinary 12. This was error.

A. DCFS Does Not Defend the Juvenile Court's Orders on the Grounds Challenged by Petitioner

Section 361.5, subdivision (a)(2) sets forth circumstances where reunification services may be terminated before expiration of the minimum reunification period. It states: "A motion to terminate court-ordered reunification services shall not be required at the [six-month review] hearing . . . if the court finds by clear and convincing evidence one of the following: (A) That the child was removed initially under subdivision (g) of Section 300 [authorizing dependency jurisdiction, among other things, when a parent has voluntarily surrendered custody of a child] and the whereabouts of the parent are still unknown[;] (B) That the parent has failed to contact and visit the child[; or] (C) That the parent has been convicted of a felony indicating parental unfitness." (§ 361.5, subd. (a)(2).) Mother argues the juvenile court erred in terminating reunification services as to L.O., M.V., A.U., and J.U.—all of whom were over age three at the time of removal—without making any of these findings.

DCFS does not dispute Mother's contention that the juvenile court did not (and could not) make the findings required by section 361.5, subdivision (a)(2). Instead, DCFS argues the juvenile court properly terminated reunification services for all seven children under sections 361.5, subdivision (a)(1)(C) and 366.21, subdivision (e)(3). These provisions address "sibling

groups," which can include children over and under the age of three at the time of removal.

B. DCFS's Alternate Sibling Group Argument for Affirmance Is Unavailing

"[T]wo or more children who are related to each other as full or half siblings" may be treated as a "'sibling group.'" (§ 361.5, subd. (a)(1)(C).) "For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited" to a minimum of six months. (§ 361.5, subd. (a)(1)(C).) Relatedly, "[i]f the child was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days." (§ 366.21, subd. (e)(3).) "The clear purpose of these provisions is to give the court flexibility to maintain a sibling group together in a permanent home." (*In re Abraham L.* (2003) 112 Cal.App.4th 9, 14, fn. omitted (*Abraham L.*).)

The statutory exception to the 12-month minimum reunification period for children three years old and up cannot be invoked any time a dependent child has a younger sibling under age three. Rather, the exception exists solely "[f]or the purpose of

placing and maintaining a sibling group together in a permanent home." (§§ 361.5, subd. (a)(1)(C), 366.21, subd. (e)(3).)

To that end, the statute requires DCFS to address specific factors in its report(s) to the court. (§ 366.21, subd. (e)(4) ["Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interests of each child in the sibling group"]; see also *Abraham L., supra,* 112 Cal.App.4th at p. 14.) The juvenile court "shall [also] specify the factual basis for its finding" that it is in each child's interest to schedule a section 366.26 hearing for some or all members of the sibling group. (§ 366.21, subd. (e)(4).)

In this case, DCFS's reports did not recommend treating all seven children as a single sibling group and DCFS never suggested all seven children could be placed together in a permanent home. While DCFS indicated the siblings appeared happy and comfortable with one another during sibling visits, the report also did not assess the closeness or strength of their bond, the appropriateness of maintaining the sibling group together, the likelihood of finding a permanent home for the group, or the detriment to each child if sibling ties were not maintained.

Obviously, the juvenile court cannot have reviewed and considered what was absent from DCFS's reporting. Moreover, the record includes no specification by the juvenile court of the factual basis underlying any finding that it was appropriate to terminate reunification services and schedule a parental rights termination hearing for all seven children.

In view of these deficiencies, we conclude the order terminating reunification services and setting a section 366.26 hearing for L.O., M.V., A.U., and J.U. must be vacated and the cause remanded for a new review hearing. (See, e.g., *Abraham L., supra,* 112 Cal.App.4th at pp. 14-15.)

DISPOSITION

The petition for extraordinary writ is granted. The matter is remanded to the juvenile court with directions, as to L.O., M.V., A.U., and J.U., to vacate its March 7, 2019, order(s) terminating reunification services and setting a hearing pursuant to section 366.26; to schedule a new six-month review hearing for L.O., M.V., A.U., and J.U.; to order DCFS to prepare a supplemental report for the new six-month review hearing that addresses the factors listed in paragraph four of section 366.21, subdivision (e); and to order reinstatement of family reunification services pending the new six-month hearing.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J. KIM, J.